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Supreme Court, U.S.
FILED
JAN 26 1999
OFFICE OF THE CLERK

98-7959

CASE NO. :

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI

RONALD DEAN LOWE,

Petitioner,

versus

DEPARTMENT OF CORRECTIONS,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI FROM THE

SUPREME COURT

FOR THE STATE OF OKLAHOMA

REGARDING A PETITION FOR A WRIT OF MANDAMUS

PETITION FOR A WRIT OF CERTIORARI

Ronald Dean Lowe
Inmate No. 219027
Pro Se Litigant
D.C.C.C.
P.O. Box 220
Hominy, OK 74035-0220

43 PP

QUESTIONS PRESENTED

The Petitioner, Ronald Dean Lowe, offers for consideration the following and heretoafter given issues in the current petition for a writ of certiorari:

(01). Can the States actively interfere with the First Admendment right of access to the Government of the United States?

(02). Does access to Federal Bureau of Investigation (F.B.I.) arrest and conviction records (i.e., "rap sheets") qualify for First Admendment protections?

LIST OF PARTIES

The Petitioner, Ronald Dean Lowe, states that all interested parties to or in the current petition for a writ of certiorari appear in the caption of the case or litigation on the cover page.

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— U.S. —, 116 S.Ct. 2174, — L.Ed.2d — (1996) 05

REPORTERS COMMITTEE FOR FREEDOM OF PRESS V. UNITED STATES

816 F.2d 730 (D.C. Cir. 1987), on rehearing,
831 F.2d 1124 (D.C. Cir. 1987) 05

TARLTON V. SAXBE

507 F.2d 1116 (D.C. Cir. 1974), on remand
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Ronald Dean Lowe, herewith respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits of the matter or litigation appears at Appendix A and is unpublished.

JURISDICTION

The date on which the Supreme Court, for the State of Oklahoma, decided the present case or litigation was on the 07th day of December 1998. Further, a copy of that decision appears at Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner, Ronald Dean Lowe, articulates that the current litigation or matter involves the following constitutional and statutory provisions:

01. FIRST (1ST) AMENDMENT

'Congress shall make no law respecting an establishment of religion, or (to) prohibit the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.' United States Code Service (U.S.C.S.), Amendment I.

02. FREEDOM OF INFORMATION ACT (FOIA)

See 5 U.S.C.S. Section 552(a)(4)(B). (Text unavailable).

03. FBI IDENTIFICATION RECORDS PROCEDURE STATUTE

'(a). The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; ....'

United States Code Service, Title 28, Section 534. (28 U.S.C.S. Section 534).

STATEMENT OF THE CASE

The Petitioner, Ronald Dean Lowe, an inmate under the direction and control of the Department of Corrections (DOC), for the State of Oklahoma, brings the current petition for a writ of certiorari to the Supreme Court of the United States in a state of penury or *in forma pauperis* and via self-representation or *pro se*. Currently, the Petitioner is imprisoned or detained at the R.B. "Dick" Conner Correctional Center (D.C.C.C.) situated or located in the municipality or city of Hominy, within the State of Oklahoma.

This document is relevant to the conviction of the Petitioner for the alleged or putative crime of two (2) counts of murder in the first degree, in violation of Oklahoma Statutes Annotated, 1998 C.A.P.P., Title 21, Section 701.7. *State v. Lowe*, jury return guilty verdicts, Case Number CRF-93-111 (District Court of Pottawatomie County, 14 September 1993).

Specifically, the current litigation is apposite the attempts of the litigant or Petitioner to obtain the Federal Bureau of Investigation (F.B.I.) maintained criminal records, or "rap sheet" documents, relevant to the Petitioner.

REASONS FOR GRANTING THE PETITION

01. DISSEMINATION OF FBI RECORDS

"FBI is not prevented from disseminating accurate criminal records, or from disseminating inaccurate records after taking reasonable measures to safeguard accuracy." See Tarlton v. Saxbe, 507 F.2d 1116 (D.C. Cir. 1974), on remand, 407 F.Supp. 1083 (D.C. District Court).

"28 USCS Section 534 does not contain express exemption from disclosure of documents maintained by federal government as provided by Freedom of Information Act (5 USCS Section 552(a)(4)(B)) so as to render it withholding statute under Exemption 3 of FOIA." See Reporters Committee for Freedom of Press v. United States Department of Justice, 816 F.2d 730 (D.C. Cir. 1987), on rehearing, 831 F.2d 1124 (D.C. Cir. 1987).

02. ACTIVE INTERFERENCE BY THE STATE

The United States Supreme Court has already decreed that the "right of access to the courts" has been protected 'by prohibiting State prison officials from actively interfering with inmates' attempts to prepare legal documents ....' Lewis v. Casey, --- U.S. ---, ---, 116 S.Ct. 2174, 2179, --- L.Ed.2d --- (1996). (Citations omitted). (Emphasis supplied).

Similarly, the Petitioner urges that the Supreme Court of the United States

should likewise protect the "right of access to the Government" cognizant under the First (1st) Admendment by prohibiting State prison officials from "actively interfering" with inmates' attempts to obtain accesible records maintained by the United States Government through the Freedom of Information Act (FOIA), 5 U.S.C.S. Section 552(a)(4)(B).

CONCLUSIONS

The Petitioner, Ronald Dean Lowe, hereby respectfully entreaties the Supreme Court of the United States to forthwith sustain and grant the current petition for a writ of certiorari.

Respectfully submitted,



Ronald Dean Lowe
Inmate No. 219027
Pro Se Litigant
D.C.C.C.
P.O. Box 220
Hominy, OK 74035-0220

Dated : 22 January 1999

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
DEC 7 1998
JAMES W. PATTERSON
CLERK

RONALD DEAN LOWE,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 92,015
	)	
DEPARTMENT OF CORRECTIONS	)	
	)	
Respondent.	)	

ORDER

Motion for guardian ad litem denied. Application to assume original jurisdiction denied.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 7TH DAY OF DECEMBER, 1998.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

RONALD DEAN LOWE,	)	
	)	
Petitioner,	)	
vs.	)	No. 92,015
	)	
DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent.	)	

RESPONDENT'S RESPONSE TO PETITION FOR A WRIT OF MANDAMUS

Respondent Department of Corrections submits the following Response to Petitioner's Petition for a Writ of Mandamus.

SUMMARY OF THE RECORD

Petitioner Lowe brings this action seeking to have this Court order the Respondent to take Petitioner's fingerprints and provide him with the fingerprints so that he may obtain a copy of his rap sheet from the Federal Bureau of Investigation. Respondent asserts that mandamus is not appropriate, Petitioner is not entitled to be fingerprinted, and Petitioner has not shown that this Court should accept original jurisdiction in this matter.

PROPOSITION

PETITIONER HAS NOT SHOWN THAT HE IS ENTITLED TO MANDAMUS RELIEF.

It is indisputable that the action which Petitioner requests this Court to undertake is in the nature of a very extraordinary remedy, a remedy not to be taken lightly. Silver Griddle Co. v. City of Oklahoma City, 570 P.2d 619 (Okla. 1977); Martin v. Harrah Independent School Dist., 543 P.2d 1370 (Okla. 1975).

In order to obtain a writ of mandamus, a petition must show:

1. That a clear legal right exists and is vested in Petitioner;

2. That the Respondent has refused to perform a plain legal duty which does not involve the exercise of discretion; and

3. The requested relief may only be obtained through granting the Writ.

Draper v. State, 621 P.2d 1142 (Okla. 1980).

Here, Petitioner has failed to show that the Respondent refused to perform a plain legal duty not involving discretion. Petitioner has not shown that he is entitled to be fingerprinted by the Department of Corrections on Petitioner's demand. Therefore, Petitioner has not shown that he is entitled to mandamus relief and his Petition should be denied and dismissed.

In addition, Petitioner has failed to show why this Court should assume original jurisdiction of his Petition for a Writ of Mandamus. Article 7 § 4 of the Constitution of Oklahoma governs the jurisdiction of this Court. The Article states in relevant part:

> The appellate jurisdiction of the Supreme Court shall be coextensive with the State and shall extend to all cases at law and in equity. . . . The appellate and the original jurisdiction of the Supreme Court and all other appellate courts shall be invoked in the manner provided by law.

Okla. Const. art. 7, § 4. Rule 1.191 of the Oklahoma Supreme Court Rules specifically states that applications to assume original jurisdiction shall state concisely:

> (1) the reasons why such action or proceeding is brought in the Supreme Court instead of another court of competent jurisdiction and why original jurisdiction should be assumed,
>
> (2) the nature of the remedy or relief sought, and
>
> (3) the facts entitling the petitioner to the remedy or the relief sought.

Okla.Sup.Ct.R. 1.191(b).

Petitioner has wholly failed to justify his request for this Court's assumption of original jurisdiction to consider his request for mandamus. He has set forth no valid reason why his Petition was filed with this Court instead of with another court of competent jurisdiction. Petitioner

has failed to demonstrate why this Court should assume original jurisdiction of this matter. Therefore, this Petition should be denied and dismissed.

CONCLUSION

Petitioner is not entitled to mandamus relief. Petitioner has failed to show that the Respondent has refused to perform a plain legal duty or that Petitioner is entitled to the extraordinary relief he seeks. Petitioner has also failed to show that this Court should assume original jurisdiction in this case. Since he has failed to meet the high standard required to warrant the remedy of mandamus or the exercise of original jurisdiction by this Court, the Petition should be dismissed.

Respectfully submitted,

ATTORNEY FOR RESPONDENT

TRACY FOLSOM MILNER, OBA # 16113
ASSISTANT ATTORNEY GENERAL
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, OK 73105
(405) 521-4274
Fax (405) 528-1867

CERTIFICATE OF MAILING

I certify that on the 27th day of October, 1998, I mailed a true and correct copy of the foregoing document to:

Ronald Dean Lowe #219027
Dick Conner Correctional Center
P.O. Box 220
Hominy, OK 74035-0220

TRACY FOLSOM MILNER

APPENDIX C

SUPREME COURT

FOR THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
OCT 8 1998
JAMES W. PATTERSON
CLERK

RONALD DEAN LOWE,)
)
Petitioner,)
)
vs.) CASE NO. :
)
DEPARTMENT OF CORRECTIONS,) # 92015
)
Respondent.)

PETITION FOR A WRIT OF MANDAMUS

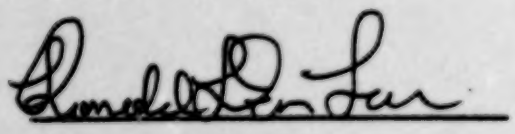
COMES NOW the Petitioner, Ronald Dean Lowe, and hereby respectfully entreats the Supreme Court, for the State of Oklahoma, for a writ of mandamus to issue, based upon the statutory authority of Oklahoma Statutes Annotated, 1993, Title 12, Section 1451, to compel the Respondent, Department of Corrections (DOC), to forthwith fingerprint the Petitioner to facilitate the obtainment of the F.B.I. "rap sheet" apposite the Petitioner. Additionally, the Petitioner asseverates that the Supreme Court, for the State of Oklahoma, is the proper forum for this extraordinary writ litigation as the impact of a favorable judgment in favor of the Petitioner will have statewide implications. Accord Draper v. State, 621 P.2d 1142, 1145 (Okla. 1980).

Further, the Petitioner states that the peremptory writ is proper in the case or litigation under examination as the right to the performance of the act that is entreatied by the Petitioner is clear and unambiguous within the provisions

of the United States Constitution and federal statute. See United States Code Service ("U.S.C.S."), Constitution Admendment XIV; United States Code Service ("U.S.C.S."), Title 28, Section 534. See also Freedom of Information Act.

Additionally, the Petitioner articulates that the requisite, founded upon the authority defined in Oklahoma Statutes Annotated, 1993, Title 12, Section 1445, Affidavit in support of the current petition has been completed or perfected by the Petitioner. See Exhibit A.

Respectfully submitted,



Ronald Dean Lowe
Inmate No. 219027
Pro Se Litigant
D.C.C.C.
P.O. Box 220
Hominy, OK 74035-0220

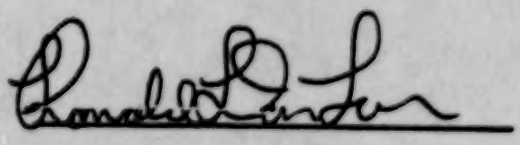
Dated : 02 October 1998

CERTIFICATE OF SERVICE

I certify that on the 7TH day of OCTOBER 1998 that a carbon-copy of the current pleading was mailed to:

R.B. "Dick" Conner Correctional Center
Attn : Mr. Ronald J. Champion
Warden
P.O. Box 220
Hominy, OK 74035-0220

The last known address.



Ronald Dean Lowe

Dated : 02 October 1998

EXHIBIT A

AFFIDAVIT

STATE OF OKLAHOMA)
) ss.
COUNTY OF OSAGE)

I, Ronald Dean Lowe, being duly sworn, deposes and expounds under the penalty of perjury, based upon the statutory provisions of Oklahoma Statutes Annotated, 1988, Title 21, Section 491 et seq., that the heretoafter documented relevant facts and informatiom are true and accurate to the best of my entire knowledge and belief:

(01). That the Affiant has a Constitutional right to access to the Federal Bureau of Investigation (F.B.I.) records. See Attachment A.

(02). That, in correspondence dated the 13th day of March 1998, the Affiant requested a copy of the "rap sheet" maintained by the F.B.I. apposite the Affiant.

(03). That the F.B.I. responded to the correspondence of the Affiant, dated the 13th day of March 1998, with a note dated the 15th day of April 1998, that advised that the Affiant needed to submit a completed or perfected fingerprint card (FD-258). See Attachment B.

(04). That the Affiant submitted a self-completed fingerprint card ostensibly received by the F.B.I. on the 25th day of April 1998.

(05). That, in a note dated the 11th day of May 1998, the F.B.I. specified that the provided fingerprints were unclassifiable. See Attachment C.

(06). That the Affiant employed the Request to Staff Member and the Offender Grievance Report Form systems at the Oklahoma State Reformatory (OSR). See Attachments D and E. See also Attachment I.

(07). That the Warden, Ken Klinger, of the Oklahoma State Reformatory (OSR) advised that the "unit team" and topical law library supervisor were responsible for assisting the Affiant. See Attachment E, page 2.

(08). That the Affiant employed the Request to Staff Member and the Offender Grievance Report Form systems at the R.B. "Dick" Conner Correctional Center (DCCC). See Attachments F through J.

(09). That the topical investigator, Bob McKenzie, advises that the "unit staff" would schedule a time for fingerprinting upon request by the Affiant. See Attachment F.

(10). That the Unit Manager, Johnny Thompson, advised that the Affiant could not have a copy of the Affiant's fingerprints. See Attachment G.

(11). That the Acting Warden, Randy Cook, of the DCCC contradicted Warden, Ken Klinger, of the OSR by stating that the Department of Corrections does not provide fingerprinting at the request of the inmates. See Attachment H.

(12). That in the grievance appeal of the OSR decision the Affiant was chastised for allegedly not following the advise of the Warden, Ken Klinger. See Attachment I.

(13). That the Affiant contends that the decisions of the Acting Warden, Randy Cook, and Unit Manager, Johnny Thompson, of the DCCC are clearly erroneous.

(14). That the topical DCCC grievance appeal (DCCC 97-179) was return to the Affiant unanswered. See Attachment J.

(15). That the Warden, Ronald J. Champion, of the DCCC placed the Affiant on Griefance Restriction until the 07th day of January 1999. Hence, the Affiant has no further administrative remedies. See Attachment J.

FURTHER AFFIANT SAYETH NOT.

FURTHER AFFIANT SAYETH NOT.

Ronald Dean Lowe

Dated : 02 October 1998

SUBSCRIBED AND SWORN TO before me on this the 02nd day of October 1998, in the County of Osage, within the State of Oklahoma.

Norma Bullock

Notary Public

My commission expires on :

4-21-2001

NORMA BULLOCK NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA OSAGE COUNTY

ATTACHMENT A

RULES AND REGULATIONS

[ORDER 556-73]
PART 16-PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart C-Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

By order dated September 24, 1973, the Attorney General of the United States directed that the Federal Bureau of Investigation, hereinafter referred to as the FBI, publish rules for the dissemination of arrest and conviction records to the subjects of such records upon request. This order resulted from 8 determination that 28 U.s.C. 534 does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, satisfactory proof of identity of the person whose identification record is requested and a processing fee of $18.00.

Since the FBI Identification Division is not the source of the data appearing in identification records, and obtains all data thereon from fingerprint cards or related identification forms submitted to the FBI by local, state, and Federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data require that the subject of an identification record make application to the original contributing agency in order to correct the deficiency complained of.

The relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable because the material contained herein relates to the interpretation of 28 U.S.C. 534 as allowing the granting of an exemption to subjects of identification records and relief of prior administrative restrictions on dissemination of such records to them. Furthermore, it is deemed in the public interest that there be no delay in effective date of availability of identification records to the subjects thereof.

By virtue of the order of the Attorney General, dated September 24, 1973, and pursuant to the authority delegated to the Director, FBI by 28 CFR 0.85(b), Part 16 of 28 CFR Chapter 1, is amended by adding the following new Subpart C:

§ 16.30 Purpose and scope

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record

An FBI identification record, often referred to as a "rap sheet", is a listing of certain information taken from fingerprint cards submitted to and retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprint cards submitted in connection with Federal employment, naturalization, or military service. The identification record includes the name of the agency or institution which submitted the fingerprint card to the FBI. If the fingerprint card concerns a criminal offense, the identification record includes the date arrested or received, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint cards, disposition reports and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Identification Division is not the source of the arrest data reflected on an identification record.

§ 16.32 Procedure to obtain an identification record

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to*

***FBI**
CJIS Division
Attn: SCU, Mod. D-2
1000 Custer Hollow Road
Clarksburg, West Virginia
26306

such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

§ 16.33 Fee for production of identification record

Each written request for production of an identification record must be accompanied by a fee of $18.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigence.

§ 16.34 Procedure to obtain change, correction or updating of identification records

If, after reviewing his/her identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he/she should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his/her challenge as to the accuracy or completeness of any entry on his/her record to the Assistant Director of the FBI Identification Division, 1000 Custer Hollow Road, Clarksburg, WV 26306. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency.

Published in the Federal Register on 11/28/73; amended on 10/27/78, 10/27/81, 8/8/83, 5/6/86, 5/17/91, and 1/3/95.

ATTACHMENT B

1-126 (Rev. 10-1-97)

FEDERAL BUREAU OF INVESTIGATION
Criminal Justice Information Services Division
Clarksburg, WV 26306

Date APR 15 1998 5446

Re: FOI REQUEST

Fee will be waived upon resubmission of your original correspondence and fingerprints.

Identification and Investigative
Services Section

FBI/DOJ

ATTACHMENT C

1-688* (Rev. 4-2-98) 1000 CLUSTER HOLLOW ROAD

FEDERAL BUREAU OF INVESTIGATION
Criminal Justice Information Services Division
CLARKSBURG, W.V. 26306

Your fingerprints are being returned since they are not classifiable. A form 1-17 is attached to aid you in determining the reason(s) why the prints have been rejected. A blank applicant fingerprint card is enclosed for your use in resubmitting your prints. Your correspondence [redacted] are also being returned.

Enclosure(s)

Identification and Investigative
Services Section

MAY 1 1 1998 6 8 5 0

FBI/DOJ

ATTACHMENT D

REQUEST TO STAFF MEMBER

TO: CHIEF OF SECURITY DATE: 6 NOVEMBER 1997
(NAME AND TITLE OF STAFF MEMBER)

SUBJECT: State completely, but briefly, the problem on which you desire assistance. (GIVE DETAILS)

FINGERPRINTING: IN ORDER TO OBTAIN A COPY OF THE "RAP SHEET" FOR THE INMATE MAINTAINED BY THE F.B.I., THE INMATE NEEDS A FINGERPRINT CARD (FD-258) TO BE COMPLETED.

(USE OTHER SIDE IF MORE SPACE IS NEEDED)

ACTION REQUESTED: State exactly how you believe this request may be handled, that is, what exactly should be done and how.

THUSLY, I RESPECTFULLY ENTREATY YOUR OFFICE TO MAKE THE NECESSARY ARRANGEMENTS TO HAVE THE FINGERPRINT CARD PERFECTED FORTHWITH.

NAME: RON LOWE NUMBER: 219027 P.O. BOX / CELL NUMBER: A-1-6

WORK ASSIGNMENT: UNASSIGNED

NOTE: If you follow instructions in preparing your request, it can be disposed of more intelligently and promptly. **YOU WILL BE INTERVIEWED IF NECESSARY**, in order to handle your request. Your failure to specifically state your problem may result in no action being taken.

DO NOT WRITE BELOW THIS LINE

PLEASE CIRCLE ONE OF THE FOLLOWING TO INDICATE THE GENERAL NATURE OF REQUEST.

(Correspondence) (Cell Move) (Trusty Application) (Interview Request) (Job Transfer)

(Miscellaneous) (Parole) (Rehab. Interview) (Discharge Date) (Jail Time)

DISPOSITION: you need to have your Unit Manager to take care of this

RECEIVED
DEC 08 1997
ADMINISTRATIVE REVIEW

11-12-97

DATE:

(STAFF MEMBER)

DOC 090124 D
Revised 9/96

GRAPHICS SERVICES

ATTACHMENT F

RECEIVED

NOV 19 RECD

WARDEN'S OFFICE
O.S.R. GRANITE

(1 of 2)

184

Offender Grievance Report Form

Facility or District _____

Date 3 NOVEMBER 1997

Facility Housing Unit: A (RHU)

Name RONALD DEAN LOWE
(Print)

Facility Work Detail: UNASSIGNED

DOC Number 219027

Race W Male * Female _____

(1) The nature of your complaint. This statement must be specific as to the complaint, dates, places, personnel involved, and how you were affected. (Use if necessary, no more than one attached 8 1/2 x 11 page)

ON THE 6TH DAY OF NOVEMBER 1997, THE GRIEVANT DISPATCHED A "REQUEST TO STAFF MEMBER" FORM TO THE O.S.R. CHIEF OF SECURITY ENTREATING THE CHIEF OF SECURITY TO MAKE THE NECESSARY ARRANGEMENT TO HAVE THE F.B.I. SUPPLIED FINGERPRINT CARD (FD-258) PERFECTED FORTHWITH.

(2) Informal action taken to resolve the complaint, as well as the names of those employees from who you sought an answer to your grievance.

THE GRIEVANT UTILIZED A "REQUEST TO STAFF MEMBER" FORM DIRECTED TO THE O.S.R. CHIEF OF SECURITY. THE RESPONSE OF THE CHIEF OF SECURITY WAS DEFICIENT. FIRST, THE UNIT MANAGER WOULD NEVER ANSWER THE SUGGESTED "REQUEST TO STAFF MEMBER" FORM. SECOND, THE ISSUE PRESENTED TO THE CHIEF OF SECURITY WAS DECIDEDLY SECURITY RELATED AND THUSLY THE CHIEF, AT THE LEAST, SHOULD HAVE DELEGATED THE MATTER.

(3) The action you believe the reviewing authority should take.

THE APPROPRIATE PRISON OFFICIAL SHOULD BE ORDERED TO EXECUTE THE PETITIONED ACTIONS TO FACILITATE THE REQUISITE FINGERPRINTING.

You must file within 15 calendar days of the incident.

Do not xerox any operations, field, or administrative memoranda, cases from law books, or any department publication as attachments to your grievance. Make reference to the above, and /or provide citation to legal case materia

RECEIVED

DEC 08 1997

ADMINISTRATIVE REVIEW

Grievance Report sent to:

KEN KLINGER
Name

WARDEN, O.S.R.
Title

Ronald Dean Lowe

14 NOVEMBER 1997

'187 A 18
97-1813

RECEIVED

DEC 08 1997

ADMINISTRATIVE REVIEW

(2 of 3)

RESPONSE FROM REVIEWING AUTHORITY

Receipt Date DEC 19 1997 Grievance Number CSC 97-188

GRIEVANCE CATAGORY CODES

A. Individual Problem

B. Policy/Procedure

1. Classification
2. Complaint against staff
3. Condition of confinement
4. Disciplinary Process
5. Legal
6. Medical
7. Property
8. Records
9. Visiting
10. Other

Response: (Use back side of page and, if necessary, one additional 8½ × 11 page.)

Ronald Dean Lowe, #219027:

The Chief of Security is correct. Assistance in your attempt to obtain a rap sheet is the responsibility of your unit team and the institutional Law Library Supervisor. I suggest you address this with them.

Request for relief denied.

You have the right to appeal to the Director/Medical Director, (Department of Corrections, 3400 Martin Luther King Ave., Oklahoma City, Oklahoma 73136) within 10 days of receipt of my response.

K T [illegible]
Reviewing Authority

11-24-97
Date

I wish to continue my appeal to the Director/Medical Director because: (Use back side of page and, if necessary, one additional 8½ × 11 page.)

FIRST, THE GRIEVANT HAS ALREADY CONTACTED THE F.B.I. AND HAS DULY OBTAINED THE NECESSARY FINGERPRINT CARD AS WELL AS GENERAL DATA OR INFORMATION REGARDING PRIVATE CITIZEN ACCESS TO F.B.I. CRIMINAL DATA FILES. THUS, THE ASSISTANCE OF THE UNIT TEAM IS BOTH UNNEEDED AND UNSOLICITED. SIMILARLY, THE ASSISTANCE OF THE TOPICAL LAW

Ronald Dean Lowe
Signature of Grievant

12/14/97
Date

DOC-133001 (R 7/86)

ATTACHMENT F

Thumb Print

REQUEST TO STAFF MEMBER

TO: BOB MACKENZY INVEST. (NAME AND TITLE OF OFFICER) DATE: 5 DECEMBER 1997

SUBJECT: State completely, but briefly, the problem on which you desire assistance **(GIVE DETAILS)**

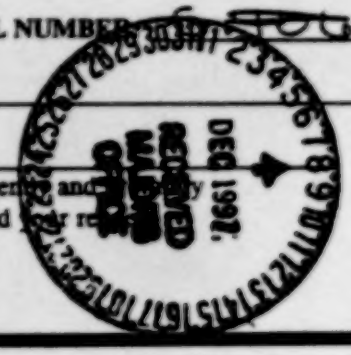
FINGERPRINTING: IN ORDER TO OBTAIN A COPY OF THE PERSONAL "RAP SHEET" MAINTAINED BY THE F.B.I., I DULY REQUIRE A COMPLETED "STANDARD" FINGERPRINT CARD. I WAS INFORMED THAT YOU ARE FULLY QUALIFIED.

ACTION REQUESTED: State exactly how you believe your request may be handled: that is, exactly what you think should be done and how.

PLEASE SCHEDULE AN APPOINTMENT.

NAME: RON LOWE NUMBER: 219027 CELL NUMBER: [illegible]

WORK ASSIGNMENT: UNASSIGNED



NOTE: If you follow instructions in preparing your request. It can be disposed of more intelligently and [illegible]
YOU WILL BE INTERVIEWED IF NECESSARY. In order to satisfactorily handled your request
Your failure to specifically state your problem may result in no action being taken.

DO NOT WRITE BELOW THIS LINE

PLEASE CIRCLE ONE OF THE FOLLOWING TO INDICATE THE GENERAL NATURE OF REQUEST.

(Correspondence) (Cell Move) (trusty Application) (Interview Request) (Job Transfer)

(Miscellaneous) (Parole) (Rehab. Interview) (Discharge Date) (Jail Time)

DISPOSITION: Please submit this request to your unit staff who will schedule a time for you to be fingerprinted.

(OFFICER)

DATE: 12-9-97

W497791 12/15/97 KJ
XC: file

DOC 090005
(R - 08-79)

Thumb Print

ATTACHMENT G

REQUEST TO STAFF MEMBER

TO: RONUZE THOMPSON / D-UNIT MANAGER Date 19 DECEMBER 1997
(NAME AND TITLE OF OFFICER)

SUBJECT: State completely, but briefly, the problem on which you desire assistance. (GIVE DETAILS)
FINGERPRINTING: IN ORDER TO OBTAIN A COPY OF THE PERSONAL "RAP SHEET" MAINTAINED BY THE F.B.I, I DULY REQUIRE A COMPLETED "STANDARD" FINGERPRINT CARD.

(USE OTHER SIDE IF MORE SPACE IS NEEDED)

ACTION REQUESTED: State exactly how you believe your request may be handled; that is, what exactly you think should be done and how.
PLEASE SCHEDULE AN APPOINTMENT.

NAME RON LOWE NUMBER 219027 CELL NUMBER D-215

WORK ASSIGNMENT KITCHEN - NA

NOTE: If you follow instructions in preparing your request, it can be disposed of more intelligently and promptly. YOU WILL BE INTERVIEWED IF NECESSARY, in order to satisfactorily handle your request. Your failure to specifically state your problem may result in no action being taken.

DO NOT WRITE BELOW THIS LINE

PLEASE CIRCLE ONE OF THE FOLLOWING TO INDICATE THE GENERAL NATURE OF REQUEST.

(Correspondence) (Cell Move) (Trusty Application) (Interview Request) (Job Transfer)

(Miscellaneous) (Parole) (Rehab. Interview) (Discharge Date) (Jail-Time)

DISPOSITION: The FBI has a copy of your finger print card - therefore you can't have a copy of your fingerprints while in prison

Johnny Mac

(OFFICER)

Date: 12-22-9

DOC 090005
(R - 0879)

46
A8
98-E1

ATTACHMENT L.

OFFENDER GRIEVANCE REPORT FORM

(1 of 2)

Facility or District _____

Date 22 DECEMBER 1997 Facility Housing Unit: D

Name RONALD DEAN LOWE (Print) Facility Work Detail: KITCHEN - NIGHT

DOC Number 219027 Race W Male X Female _____

(1) The nature of your complaint. This statement must be specific as to the complaint, dates, places, personnel involved, and how you were affected. (Use back side of page and, if necessary, no more than one attached 8½ x 11 page.)

THE GRIEVANT HAS REQUESTED TO BE FINGERPRINTED AND/OR TO HAVE ACCESS TO THE F.B.I. MAINTAINED "RAP SHEET."

(2) Informal action taken to resolve the complaint. as well as the names of those employees from whom you sought an answer to your grievance. A copy of your "Request to Staff" must be submitted with this grievance. SEE "DOC" 97-1813 : OSR 97-188.

FURTHER, I SENT A "RSM" FORM TO BOB MACKENZY WHO ANSWERED THAT UNIT STAFF SHOULD SCHEDULE A FINGERPRINTING SCHEDULE. HOWEVER, D-UNIT MANAGER JOHNNY THOMPSON SAID THIS WAS NOT ALLOWED.

(3) The action you believe the reviewing authority should take.

I NEED A COPY OF THE F.B.I. MAINTAINED "RAP SHEET."

You must file within 15 calendar days of the incident or the receipt of an answer to your "Request to Staff." (Whichever is later).

Do not xerox any operations, field, or administrative memoranda. cases from law books, or any department publication as attachments to your grievance. Only make reference to the above or provide citation to legal case material.

Grievance report sent to: RONALD J. CHAMPION
NAME

WARDEN, D.C.C.C.
TITLE

RECEIVED
JAN 08 1998
ADMINISTRATIVE REVIEW

Ronald Dean Lowe
Signature of Grievant

22 DECEMBER 1997
Date Sent to Reviewing Authority

Response from Reviewing Authority

Receipt Date 12/24/97

Grievance Number DCCC-97-179

Grievance Category Code A-8

A. Individual Problem
B. Policy/Procedures

0. Discrimination
1. Classification
2. Complaint against staff
3. Condition of confinement
4. Disciplinary process
5. Legal
6. Medical
7. Property
8. Records/sentence administration
9. Religion
10. Other _____

Response:

Mr. Lowe:
The Department of Corrections does not do fingerprint cards at the inmate's request. The request must come from another agency or from the court.

OP-060212, Page 17, C.1., states: "Information which is created by an outside agency or jurisdiction is not accessible to the offender." Therefore, if you would like to request a copy of your FBI rap sheet, you need to contact the agency that generated this information.

REQUEST DENIED.

You have the right to appeal to the director/medical services administrator (Department of Corrections, P.O. Box 11400, 3400 Martin Luther King Ave., Oklahoma City, Oklahoma 73136-0400) within ten calendar days of receipt of my response.

Randy Cook
Reviewing Authority Warden

12-29-97
Date

RC/mb xc: Johnny Thompson, File

I wish to continue my appeal to the director/medical services administrator because: (Use back side of page and, if necessary, one additional 8½ x 11 page)

"DEPARTMENT" CONTINUES TO GIVE CONFLICTING RESPONSES. OBVIOUSLY, THE RESPONSE RANDY COOK IS COUNTER TO THAT OF O.S.R. WARDEN KEN KLINGER. THUSLY, TO SEEK A WRIT OF MANDAMUS THEN SO STATE.

[signature]

5 JANUARY 1998
Date

ATTACHMENT I

JAMES L. SAFFLE
DIRECTOR

FRANK KEATING
GOVERNOR

STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF CORRECTIONS

December 15, 1997

Ronald Dean Lowe #219027
Dick Conner Correctional Center
P. O. Box 220
Hominy, Oklahoma 74035

Dear Mr. Lowe:

This correspondence is in response to several grievances as noted:

Re: 97-1744; OSR 97-180 Subj: A/7; Property
Warden Klingler has sufficiently responded to your complaint, and relief is denied. All excess property must be disposed of within 30 days.

Re: L97-1787 Subj: A/7; Property
This correspondence has been reviewed and is being returned unanswered as you failed to follow the grievance process as outlined in OP-090124 entitled Inmate/Offender Grievance Process.

Re: 97-1797; OSR 97-187 Subj: A/7; Property
Warden Klingler has accurately and sufficiently responded to your complaint, and relief is denied. The Constitution does not require that inmates be provided with any and every amenity that you may think is needed. For future reference, the U.S. Supreme Court overturned RFRA.

Re: 97-1813: OSR 97-188 Subj: A/8; Records
In the response to the "Request to Staff" dated November 12, 1997, you were advised by the Chief of security "to have your Unit Manager to take care of this." You refused to follow these instructions, and instead chose to submit a grievance to the warden. In his response dated November 24, 1997, Warden Klingler advised, "The Chief of Security is correct. Assistance in your attempt to obtain a rap sheet is the responsibility of your unit team and the institutional Law Library Supervisor." Again, you ignored these instructions, and appealed to the Director. You are required to address this issue with unit staff at your new facility.

OP-090124 entitled Inmate/Offender Grievance Process, Section X, states in part, "The appropriate reviewing authority or the health services administrator may determine that there is abuse or misuse of the grievance process (such as but not limited to: grievances intended to harass another; the continual and repeated filing of frivolous or repetitive addressed by staff in his/her previous

grievance, letter, or Request to Staff; grievances about de minimis (small, trifling, no available remedy) issues; ...and may restrict the inmate's/offender's capacity to file a grievance." OP-090124 goes on to state, "The abuse of process may also involve the informal process as in the case of an inmate/offender using letters and failing to bring his/her complaints by formal grievance."

As evidenced by this letter, you have submitted a frivolous grievance by failing to follow instructions given by staff, and you have used a letter instead of addressing your complaint utilizing the grievance process. Further abuse of the grievance process **at any level** as explained in section X of OP-090124 will result in restrictions being imposed.

Sincerely,

Dolores Ramsey 12/15/97

Dolores Ramsey
Designee for the Director

/LS

cc: Ken Klingler, Warden, Oklahoma State Reformatory
Ronald Champion, Warden, Dick Conner Correctional Center

ATTACHMENT J

JAMES L. SAFFLE
DIRECTOR

FRANK KEATING
GOVERNOR

STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF CORRECTIONS

January 27, 1998

Ronald Dean Lowe #219027
Dick Conner Correctional Center
P. O. Box 220
Hominy, Oklahoma 74035

Re: 97-1974; DCCC 97-167
Subj: A/8; Records/Sentence Administration

Re: 98-44; DCCC 97-180
Subj: A/7; Property

Re: 98-45; DCCC 97-173
Subj: A/7; Property

Re: 98-46; DCCC 97-170
Subj: A/7; Property

Re: 98-51; DCCC 97-179
Subj: A/8; Records/Sentence Administration

Dear Mr. Lowe:

The above listed grievances have been reviewed and are being returned unanswered. Effective January 8, 1998, Warden Champion placed you on grievance restriction until January 7, 1999. You are required to follow steps outlined in Section X of OP-090124 Inmate/Offender Grievance Process prior to submitting a grievance at any level.

Sincerely,

Dolores Ramsey 1/28/98

Dolores Ramsey
Designee for the Director

/LS

cc: Ronald Champion, Warden, Dick Conner Correctional Center

3400 MARTIN LUTHER KING AVENUE • P.O. BOX 11400 • OKLAHOMA CITY, OKLAHOMA 73136-0400 • (405) 425-2500 • FAX (405) 425-2064

recycled paper

CASE NO. :

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI

RONALD DEAN LOWE,

Petitioner,

versus

DEPARTMENT OF CORRECTIONS,

Respondent.

PROOF OF SERVICE

I, Ronald Dean Lowe, being duly sworn, hereby declares that on the 25th day of January 1999, pursuant to Supreme Court Rule 29, a true and correct copy of the foregoing Motion for Leave to Proceed In Forma Pauperis and Petition for a Writ of Certiorari were caused to be served on each party to the above cause or proceeding or on the attorney-of-record for the party, and on every other party or person required to be served, by depositing an envelope or similar article with the aforementioned legal papers therein contained into the United

States Postal Service (U.S.P.S.) mail container fully and properly addressed to each of the parties or persons with first-class type postage duly prepaid by the Petitioner. The names and complete addresses of the parties served are:

Ms. Tracy Folsom Milner; Assistant Attorney General; 4545 North Lincoln Blvd., Suite 260, Oklahoma City, Oklahoma, 73105-3498.

Respectfully submitted,

Ronald Dean Lowe
Inmate No. 219027
Pro Se Litigant
D.C.C.C.
P.O. Box 220
Hominy, OK 74035-0220

I, Ronald Dean Lowe, being duly sworn, herewith verifies under the penalty of perjury, pursuant to United States Code Annotated, Title 18, Section 1621, that the facts alleged in the current Proof of Service are true and accurate to the best of my entire knowledge and belief.

Ronald Dean Lowe

Executed at Hominy, Oklahoma on the 22nd day of January 1999.